उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.-934 OF 2005

Appellant Accused (In Jail)	:	Govind Singh, Son of Shri Mahendra Singh, Aged about 22 years, Occupation Driver, Resident of H.S.C.L. Colony, Khursipar, Bhilai, District Durg (C.G.)
	Versus	
Respondent	:	State of Chhattisgarh, Through : The Police Station, Bhilai Bhatti, District Durg (C.G.)

Present

Mr. Uttam Pandey, counsel for the appellant.

Mr. Neeraj Mehta, Panel Lawyer for the State/respondent.

ORAL JUDGMENT

(29th November 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 20th January 2005 passed in S.T.No. 157/2004 whereby learned VII Additional Sessions Judge (FTC), Durg has convicted the appellant under Sections 447 of IPC and sentenced him to undergo RI for 3 months, pay a fine of Rs.500 and in default thereof to undergo RI for 15 days, under Section 353 of IPC RI for 1 year, pay a fine of Rs.1,000/- and in default thereof RI for 3 months, under Section 333 of IPC RI for 5 years, pay a fine of Rs.5,000/- and in default thereof RI for 1 year and under Section 25(1b)(b) read with Section 4 of the Arms Act to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

undergo RI for 3 years, pay a fine of Rs.1,000/- and in default thereof to undergo RI for 6 months. All the original sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that PW-1 Bhupendra Singh, Head Constable, Central Industrial Security Force (CISF), PW-2 Kamlesh Bahadur - Constable, PW-4 B.S. Sahu - Head Constable and PW-5 B.C. Rai, Constable were on ambush duty in the central store area of Bhilai Steel Plant on 17.5.2004 at about 11.00 p.m. During this period at about 2.00 a.m. on 18.5.2004 the accused entered in the B.S.P. area for committing theft of iron. He was encircled by the public servants present on duty and at that juncture, the appellant who was possessing illegal knife assaulted the Head Constable B.S. Sahu by his knife which struck him on his left rib. However, the accused was overpowered with the help of other three constables. The injured head constable was taken to Main Medical Post of the B.S.P. for preliminary treatment and thereafter taken to Sector-9 Hospital, Bhiali. The accused was brought to the Crime Branch of CISF along with the knife and the same was seized in the Crime Branch vide Ex.P/3. Report was also registered on the information of Bhupendra Singh (PW-1) vide Ex.P/1. Thereafter, the accused was taken to Police Station - Bhilai Bhatti where on the basis of report of Ex.P/1, First Information Report of Ex.P/1A was recorded. The X-ray report of B.S. Sahu was obtained from Sector-9 Hospital, Bhilai, according

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to which 9th rib bone of B.S. Sahu was found fractured. After completing investigation charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Durg and the same was received on transfer for trial by learned Additional Sessions Judge.

3. During trial the prosecution examined 7 witnesses in all. Thereafter, statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellant submits that seizure of the knife was effected by CISF personnel on being produced by them and the same was seized by the police, however, the doctor has categorically opined that the knife did not contain bloodstain. He further argued that the allegation against the appellant is that he scaled the wall of 15-20 ft. height, however, he did not sustain any injury, which also makes the prosecution case doubtful and improbable. The independent witnesses though present were not examined by the prosecution. He further contended that apart from the present appellant number of other persons were also involved in the said offence as mentioned in the statement of

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complainant Bhupendra Singh (PW-1) as also Dr. M.R.Soni (PW-7), however, except the appellant no one was arrested nor their statements were recorded nor bloodstain clothes of B.R. Sahu has been seized, which also falsified the alleged injuries sustained by the injured and in these circumstances, the Court below ought to have extended benefit of doubt to the appellant.

5. On the other hand, learned counsel for the State supporting the impugned judgment submits that the appellant was caught red handed while he was attempting to commit theft of iron in the plant area and while he was being apprehended he assaulted the injured B.S. Sahu with knife to deter him from discharging his public duties. The injuries sustained by the injured have been duly proved by Dr. K.H. Ramesh (PW-3). B.S. Sahu (PW-4) also sustained bony injury, which has been proved by Dr. M.R. Soni (PW-7) vide Ex.P/8. From the statements of the eyewitnesses and injured eyewitness B.S. Sahu involvement of the appellant in crime in question is established.

6. I have heard learned counsel for the respective parties and have perused the material available on record including the impugned judgment of the trial Court.

7. PW-4 B.S. Sahu, the injured eyewitness, has deposed that on 17.5.2004 he was on ambush duty in the central area of B.S.P.

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

when at about 2.00 a.m. he spotted a person in the bushes. When he tried to apprehend him, he started freeing himself after assaulting him with the knife. However, his other three colleagues caught him. He identifies the appellant present in the Court as earlier also he had attempted theft in the plant in the month of February and March and at that time, he was holding sword and a case is pending against him in the Court. He reached control room and thereafter he was taken to main medical post where preliminary treatment was provided to him and thereafter, he was referred to Sector-9 Hospital, Bhilai. He remained hospitalized for three days for the treatment of his left rib and the report was lodged in the Police Station Bhatti by Bhupendra Singh. Defence has not been able to elicit anything from this witness, which makes the evidence of this witness untrustworthy or unreliable. His version is duly corroborated from the statement of PW-1 Bhupendra Singh, Head Constable, who lodged the complaint and PW-2 Kamlesh Bahadur, Constable, CISF. Dr. K.H.Ramesh (PW-3) has examined B.S. Sahu on 18.5.2004 and has given his report of Ex.P/4, in which he has found penetrating stab injury on the left side of his chest of size 1.5 x ½ cm. He was referred for X-ray examination and in the X-ray report 9th rib of left side of chest was found fractured. The fracture injury has also been proved by Dr. M.R. Soni (PW-7), whose report is Ex.P/8. PW-5 B.C. Rai, Constable, was also present at the time of incident and he is a

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

witness of the fact that when he and other CISF personnel were trying to arrest the appellant he had assaulted B.S. Sahu with knife and thereafter, he was overpowered and apprehended by them. Thus, from perusal of statement of injured B.S. Sahu and other three eyewitnesses who apprehended the appellant from the place of incident and also from the injury reports of Ex.P/4 & P/8 of the injured, involvement of the appellant in crime in question is established.

8. So far as argument of learned counsel for the appellant that absence of injury over person of the accused/appellant creates doubt about the veracity of the prosecution case, is concerned, absence of injury over person of the accused would not impeach the clinching evidence adduced by the prosecution to establish the charge against the appellant nor the non-seizure of bloodstained clothes of the injured is fatal to the case of the prosecution. The version of eyewitnesses of the incident, who had apprehended the appellant from the place of incident, cannot be discarded simply on the ground that they are official witnesses and independent witnesses have not been examined as their statements are duly corroborated from the medical evidence.

9. At this stage, learned counsel for the appellant argued that the appellant has been convicted with a maximum jail sentence of five years' RI under Section 333 of the IPC, however, looking to the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

age of the appellant that he was 22 years old at the time of incident, the Court below ought to have awarded him lesser jail sentence. It is further argued that the appellant is in jail since 19th May 2004 and as such he has already completed three years six months of jail sentence and in these circumstances, he may be sentenced for the period already undergone by him.

10. Having regard to the facts and circumstances of the case and considering the statement of injured eyewitness B.S. Sahu, who has stated that the appellant was also involved in the similar offences in the past and at that time he was holding sword and a case is pending against him in the Court, this Court is of the considered opinion that the sentence imposed on the appellant by the learned trial Court is just and proper and does not call for interference.

11. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed.

Sd/-
DHIRENDRA MISHRA
Judge